

107TH CONGRESS
2D SESSION

S. 2614

To amend title XVIII of the Social Security Act to reduce the work hours and increase the supervision of resident-physicians to ensure the safety of patients and resident-physicians themselves.

IN THE SENATE OF THE UNITED STATES

JUNE 12, 2002

Mr. CORZINE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to reduce the work hours and increase the supervision of resident-physicians to ensure the safety of patients and resident-physicians themselves.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Patient and Physician
5 Safety and Protection Act of 2002”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) The Federal Government, through the medi-
2 care program, pays approximately \$8,000,000,000
3 per year solely to train resident-physicians in the
4 United States, and as a result, has an interest in as-
5 suring the safety of patients treated by resident-phy-
6 sicians and the safety of resident-physicians them-
7 selves.

8 (2) Resident-physicians spend a significant
9 amount of their time performing activities not re-
10 lated to the educational mission of training com-
11 petent physicians.

12 (3) The excessive numbers of hours worked by
13 resident-physicians is inherently dangerous for pa-
14 tient care and for the lives of resident-physicians.

15 (4) The scientific literature has consistently
16 demonstrated that the sleep deprivation of the mag-
17 nitude seen in residency training programs leads to
18 cognitive impairment.

19 (5) A substantial body of research indicates
20 that excessive hours worked by resident-physicians
21 lead to higher rates of medical error, motor vehicle
22 accidents, depression, and pregnancy complications.

23 (6) The medical community has not adequately
24 addressed the issue of excessive resident-physician
25 work hours.

1 (7) Different medical specialty training pro-
 2 grams have different patient care considerations but
 3 the effects of sleep deprivation on resident-physi-
 4 cians does not change between specialties.

5 (8) The Federal Government has regulated the
 6 work hours of other industries when the safety of
 7 employees or the public is at risk.

8 **SEC. 3. REVISION OF MEDICARE HOSPITAL CONDITIONS OF**
 9 **PARTICIPATION REGARDING WORKING**
 10 **HOURS OF RESIDENTS.**

11 (a) IN GENERAL.—Section 1866 of the Social Secu-
 12 rity Act (42 U.S.C. 1395cc) is amended—

13 (1) in subsection (a)(1)—

14 (A) by striking “and” at the end of sub-
 15 paragraph (R);

16 (B) by striking the period at the end of
 17 subparagraph (S) and inserting “, and”; and

18 (C) by inserting after subparagraph (S)
 19 the following new subparagraph:

20 “(T) in the case of a hospital that uses the
 21 services of physician residents or postgraduate train-
 22 ees, to meet the requirements of subsection (j).”;
 23 and

24 (2) by adding at the end the following new sub-
 25 section:

1 “(j)(1)(A) In order that the working conditions and
2 working hours of physicians and postgraduate trainees
3 promote the provision of quality medical care in hospitals,
4 as a condition of participation under this title each hos-
5 pital shall establish the following limits on working hours
6 for certain members of the medical staff and postgraduate
7 trainees:

8 “(i) Subject to subparagraph (C), postgraduate
9 trainees may work no more than a total of 80 hours
10 per week and 24 hours per shift.

11 “(ii) Subject to subparagraph (C), postgraduate
12 trainees—

13 “(I) shall have at least 10 hours between
14 scheduled shifts;

15 “(II) shall have at least 1 full day out of
16 every 7 days off and 1 full weekend off per
17 month;

18 “(III) who are assigned to patient care re-
19 sponsibilities in an emergency department shall
20 work no more than 12 continuous hours in that
21 department; and

22 “(IV) shall not be scheduled to be on call
23 in the hospital more often than every third
24 night.

1 “(B) The Secretary shall promulgate such regulations
2 as may be necessary to ensure quality of care is main-
3 tained during the transfer of direct patient care from 1
4 postgraduate trainee to another at the end of each such
5 24-hour period referred to in subparagraph (A) and shall
6 take into account cases of individual patient emergencies.

7 “(C) The work hour limitations under subparagraph
8 (A) and requirements of subparagraph (B) shall not apply
9 to a hospital during a state of emergency declared by the
10 Secretary that applies with respect to that hospital.

11 “(2) The Secretary shall promulgate such regulations
12 as may be necessary to monitor and supervise post-
13 graduate trainees assigned patient care responsibilities as
14 part of an approved medical training program, as well as
15 to assure quality patient care.

16 “(3) Each hospital shall inform postgraduate trainees
17 of—

18 “(A) their rights under this subsection, includ-
19 ing methods to enforce such rights (including so-
20 called whistle-blower protections); and

21 “(B) the effects of their acute and chronic sleep
22 deprivation both on themselves and on their pa-
23 tients.

1 “(4) For purposes of this subsection, the term ‘post-
 2 graduate trainee’ includes a postgraduate intern, resident,
 3 or fellow.”.

4 (b) DESIGNATION.—

5 (1) IN GENERAL.—The Secretary of Health and
 6 Human Services shall designate an individual within
 7 the Department of Health and Human Services to
 8 handle all complaints of violations that arise from
 9 residents who report that their programs are in vio-
 10 lation of the requirements of section 1866(j) of the
 11 Social Security Act (as added by subsection (a)).

12 (2) GRIEVANCE RIGHTS.—A postgraduate train-
 13 ee or physician resident may file a complaint with
 14 the Secretary of Health and Human Services con-
 15 cerning a violation of such requirements. Such a
 16 complaint may be filed anonymously. The Secretary
 17 may conduct an investigation and take such correc-
 18 tive action with respect to such a violation.

19 (3) CIVIL MONEY PENALTY ENFORCEMENT.—
 20 Any hospital that violates such requirement is sub-
 21 ject to a civil money penalty not to exceed \$100,000
 22 for each resident training program in any 6-month
 23 period. The provisions of section 1128A of the Social
 24 Security Act (other than subsections (a) and (b))
 25 shall apply to civil money penalties under this para-

graph in the same manner as they apply to a penalty or proceeding under section 1128A(a) of such Act.

(4) DISCLOSURE OF VIOLATIONS AND ANNUAL REPORTS.—The individual designated under paragraph (1) shall—

(A) provide for annual anonymous surveys of postgraduate trainees to determine compliance with such requirements and for the disclosure of the results of such surveys to the public on a residency-program specific basis;

(B) based on such surveys, conduct appropriate on-site investigations;

(C) provide for disclosure to the public of violations of and compliance with, on a hospital and residence-program specific basis, such requirements; and

(D) make an annual report to Congress on the compliance of hospitals with such requirements, including providing a list of hospitals found to be in violation of such requirements.

(c) WHISTLEBLOWER PROTECTIONS.—

(1) IN GENERAL.—A hospital covered by the requirements of section 1866(j)(1) of the Social Security Act (as added by subsection (a)) shall not penal-

1 ize, discriminate, or retaliate in any manner against
 2 an employee with respect to compensation, terms,
 3 conditions, or privileges of employment, who in good
 4 faith (as defined in paragraph (2)), individually or
 5 in conjunction with another person or persons—

6 (A) reports a violation or suspected viola-
 7 tion of such requirements to a public regulatory
 8 agency, a private accreditation body, or man-
 9 agement personnel of the hospital;

10 (B) initiates, cooperates or otherwise par-
 11 ticipates in an investigation or proceeding
 12 brought by a regulatory agency or private ac-
 13 creditation body concerning matters covered by
 14 such requirements;

15 (C) informs or discusses with other em-
 16 ployees, with a representative of the employees,
 17 with patients or patient representatives, or with
 18 the public, violations or suspected violations of
 19 such requirements; or

20 (D) otherwise avails himself or herself of
 21 the rights set forth in such section or this sub-
 22 section.

23 (2) GOOD FAITH DEFINED.—For purposes of
 24 this subsection, an employee is deemed to act “in
 25 good faith” if the employee reasonably believes—

1 (A) that the information reported or dis-
2 closed is true; and

3 (B) that a violation has occurred or may
4 occur.

5 (d) EFFECTIVE DATE.—The amendments made by
6 subsection (a) shall take effect on the first July 1 that
7 begins at least 1 year after the date of enactment of this
8 Act.

9 **SEC. 4. ADDITIONAL FUNDING FOR HOSPITAL COSTS.**

10 There are hereby appropriated to the Secretary of
11 Health and Human Services such amounts as may be re-
12 quired to provide for additional payments to hospitals for
13 their reasonable additional, incremental costs incurred in
14 order to comply with the requirements imposed by this Act
15 (and the amendments made by this Act).

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